the consent order or judgment by deducting the said sum, which can easily be taken into account in the execution of the order or judgment. In any event, the bank can easily apply formally for the alteration in the said order or judgment, if need be.

Costs of the action and of this application be paid by the plaintiff (Lau) to the defendant (the bank). In the absence of an agreement, the costs are to be taxed.

STRAITS CREDIT SDN. BHD.

v.

PENTADBIR TANAH DAERAH, WILAYAH PERSEKUTUAN KUALA LUMPUR

HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[ORIGINATING SUMMONS NO. R1-24-59-93]
23 MAY 1994

LAND LAW: Land acquisition - Proposed acquisition of plaintiff's land by defendants - Enquiry not held - Time lapsed and proposed acquisition abandoned - Whether plaintiff entitled to compensation - Sections 8(4), 35(1) & (2) Land Acquisition Act 1960.

INTERPRETATION: Section 35, Land Acquisition Act 1960 - Whether to be accorded a liberal interpretation.

The defendant by way of Gazette Notification dated 10 July 1990, declared its proposal to acquire part of a land belonging to the plaintiff.

An enquiry was scheduled to be held on 25 September 1990 but the defendant adjourned it to a date to be fixed and duly notified the plaintiff of such adjournment. However no enquiry was held.

The plaintiff applied to the Court *inter-alia* for the following:

1. That the declaration contained in the Gazette Notification has lapsed and ceased to be of any effect from 10 July 1992.
2. Compensation for all costs and expenses incurred by virtue of the declaration.

The issue in question is whether the plaintiff is entitled to any compensation by reason of the abandonment of the acquisition.

Held:

[1] The Land Acquisition Act 1960 (the Act) makes no provision as to payment of any compensation in the event of a lapse of declaration under s. 8(4) the Act. The effect of a lapse is that all acquisition proceedings in respect of the land in question come to an end. The effect is the same when the State Authority withdraws from the acquisition under s. 35(1) of the Act.

[2] Section 35 of the Act should be given a liberal interpretation. The consequence of a

lapse under s. 8(4) of the Act should be the same as of a withdrawal under s. 35 of the Act.

[3] Section 35(2) of the Act is also applicable when a declaration for acquisition lapses under s. 8(4) of the Act.

[Plaintiff's prayers for all declarations and orders granted. Assessment was ordered under s. 35(2)(b) to be made by SAR on the application of the applicant].

Legislation referred to:
Land Acquisition Act 1960, ss. 8(4), 10, 35(1) & (2)(a), (b)

For the plaintiff - Harlina Mohd; M/s. Shearn Delamore & Co.
For the defendant - Fazillah Begum bte Abdul Ghani, Federal Counsel

JUDGMENT

Wan Adnan Bin Ismail J:
By this application the plaintiff is asking for the following declarations and orders:

1. That the declaration contained in Gazette Notification No. 6643 of 1990 dated 10 July 1990 in respect of a proposed acquisition of Lot 219 CT 24358 of the property owned by the plaintiff has lapsed and has ceased to be of any effect from 10 July 1992;

2. For a declaration that the plaintiff is entitled to be compensated for all costs and expenses that it has incurred by virtue of the declaration abovementioned and of the steps taken by the defendant in pursuance thereof;

3. For an order directing the defendant to either expunge from the register document of title, any reference to the acquisition, or to make a notation therein that the acquisition has lapsed and has ceased to be of any effect;

4. For such consequential relief including the assessment of the costs and expenses and for an order that the defendant do pay the plaintiff the sum so assessed.

The facts are not in dispute.

The plaintiff is the registered proprietor of all that land held under C.T. No. 24358 Lot No. 219, Mukim of Kuala Lumpur, Section 43 Bandar Kuala Lumpur Wilayah Persekutuan (the said land). By a Gazette Notification dated 10 July 1990 the Pesuruhjaya Wilayah Persekutuan gazetted a proposed acquisition for 647 square meters of the said land under s. 8 of the Land Acquisition Act 1960 (the Act).

By Form E dated 24 August 1990 the defendant fixed an enquiry to be held on 25 September 1990 at 2.00 p.m. at Jabatan Tanah dan Galian Wilayah Persekutuan, Kuala Lumpur. The defendant also furnished to the plaintiff a copy of Form F the contents whereof are as follows:

> Ada-lah di-beritahu bahawa tuan/puan adalah dengan ini di-kehendaki menyampaikan, dalam tempoh 21 hari dari tarikh ini, suatu kenyataan dengan bertulis menyatakan seperti berikut:
>
> (a) nilaian-nilaian yang berasingan bagi tanah itu dan bagi usaha-usaha yang telah di-jalankan atas-nya, jika ada, dengan menunjokkan atas asas apa nilaian-nilaian itu di-buat;
>
> (b) nama tiap-tiap orang yang ada memileki apa-apa kepentingan atas tanah itu atau mana-mana bahagian-nya, sama ada sabagai tuanpunya bersama, pemegang gadai, pemajak, pemajak-kechil, penyewa atau lain-lain; dan
>
> (c) jenis sa-suatu kepentingan itu dan jumlah sewa-sewa dan keuntongan-keuntongan, jika ada, yang telah di-terima atau yang boleh di-terima oleh sebab kepentingan itu sa-lama tiga tahun yang akhir sabelum tarikh pemberitahu ini.

However, by letter dated 25 September 1990 the defendant notified the plaintiff that the enquiry was adjourned to a date to be fixed. No enquiry was ever held.

Section 8(4) of the Act provides as follows:

> 8(4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under s. 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.

The Gazette publication of the declaration under subsection (1) was on 10 July 1990. More than two years had passed. Even the enquiry required to be held under s. 10 of the Act has not been held. Clearly under subsection (4) of the

Act the declaration has lapsed and ceased to be of any effect. The defendant in his affidavit-in-reply does not dispute this.

What really in issue is whether or not the plaintiff is entitled to any compensation by reason of the abandonment of the acquisition.

Section 35(1) & (2) of the Act provides as follows:

> 35(1) The State Authority shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
>
> (2) Whenever the State Authority withdraws from any acquisition under subsection (1), the Land Administrators shall:
>
> (a) determine the amount of compensation due for the damage, if any, done to such land by action taken under s. 5 and not already paid for under s. 6, and pay such amount to the person injured; and
>
> (b) pay to the persons interested all such costs as shall have been incurred by them by reason or in consequence of the proceedings for acquisition, together with compensation for the damage, if any, which they may have sustained by reason or in consequence of such proceedings.

The learned Counsel for the plaintiff says that the plaintiff had incurred costs and expenses in complying with the requirement of Form F and should therefore be compensated under s. 35(2)(b) of the Act. The learned Federal Counsel however says that s. 35 has no application here because the section only applies when the State Authority "withdraws from any acquisition under subsection (1)". In this case there was no withdrawal. The declaration lapsed by itself.

The Act makes no provision as to payment of any compensation in the event of a lapse of declaration under s. 8(4). The effect of a lapse is that all acquisition proceedings in respect of the land in question come to an end. The effect is the same when the State Authority withdraws from the acquisition under s. 35(1) of the Act. Should the consequence be different? In my opinion s. 35 should be given a liberal interpretation. The consequence of a lapse under s. 8(4) should be the same as of a withdrawal under s. 35 of the Act. The rights of landowners in both situations should not be different. If the issue of compensation does not arise in the event of a lapse under s. 8(4), then whenever the State Authority decides not to proceed with any acquisition, the State Authority will almost certainly always allow the declaration to lapse rather than withdraw the acquisition under s. 35(1). In my view s. 35(2) of the Act is also applicable when a declaration for acquisition lapses under s. 8(4).

I therefore granted all the declarations and orders prayed for. I further ordered that the assessment under s. 35(2)(b) be made by the Senior Assistant Registrar on the application of the Applicant.